



JC05 Rec'd PCT/PTO

16 JUL 2001

#9

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Marc ZABEAU et al

Application No. : 09/011,307

Group Art Unit:

Filed: August 6, 1996

Examiner:

Atty. Docket No. 31640-134354

For: RESISTANCE AGAINST WILT INDUCING FUNGI

Assistant Commissioner of Patents
Box PCT Legal Office
Washington, D.C. 20231

July 16, 2001

REQUEST TO WITHDRAW HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE A DECISION BY THE
PCT LEGAL OFFICE
AND RESPONSE TO DECISION

Sir:

This is a request to withdraw the Notice of Abandonment mailed May 14, 2001 for the above-identified case on the basis that the Decision by the PCT Legal Office at issue, ostensibly dated May 7, 1999, was never received by the Applicant. The basis for the Notice of Abandonment was "Applicant has failed to properly respond to the Decision by the PCT Legal Office which was mailed May 7, 1999." This submission also includes a response to that Decision. Accordingly, the Applicant requests that the holding of abandonment be withdrawn and the application be sent to the Examiner group for examination.

No fee is due. Authorization is hereby provided to charge any other fees made necessary by this submission to our Deposit Account No. 22-0261, and notification of any such charge is requested.

EVIDENCE OF NON-RECEIPT

Pursuant to MPEP § 711.03(c)(II) (“¶ II”), a request to withdraw a holding of abandonment and remailing of a Notice may be granted, if there is adequate support that the Applicant never received the Notice. To establish non-receipt as required by ¶ II, the Applicant must affirm that the Notice was not received and attest to the fact that a search of the file jacket and docket records indicates that the Notice was not received. In addition, applicant must submit a copy of the docket record demonstrating where the Notice would have been entered.

In compliance with ¶ II, this Petition and the attached docketing records sufficiently demonstrate that the Decision dated May 7, 1999, was not received.

Counsel’s file jacket does not contain a copy of the Notice that would have been placed in the file had it been received.

In addition, the attached PC Master docket report^{*c} shows all correspondence received from the PTO and entered in the docket system from the date the application was filed. This report indicates that on February 9, 1998, the referenced application was filed with the United States Patent and Trademark Office. Moreover, this report shows that no Decision with a mailing date of May 7, 1999 was received for the above-identified case. That is, there is no record of receiving the May 7, 1999 Decision for this application. If such a paper had been received in Venable in 1999, then it would have been opened by the docketing department and the “action taken” date of May 7, 1999 would have been entered under this application’s docket number and would appear in the right hand column. At that time, the “Action due date” of June 7, 1999 would also have been entered under this application’s docket number, and the report

* Unrelated confidential text describing has been redacted.

would have been updated to show receipt of the Notice. The absence of such a record, given the docketing procedures in place for opening and recording all correspondences from the PTO, leads to the conclusion that the Notice was lost *en route* to the Applicant, rather than after receipt by Applicant.

Moreover, the lack of receipt of the Decision is evidenced by the Transmittal of Supplemental Declaration and Status Inquiry submitted to the PTO by the applicants on September 11, 2000. In a Reply to Status Inquiry mailed October 6, 2000, applicants first learned of the abandonment of the above-referenced application.

In conclusion, the evidence clearly demonstrates that the Applicant did not receive the Notice dated May 7, 1999. Therefore, the Applicant requests that the holding of abandonment be withdrawn.

RESPONSE TO DECISION

A Supplemental Declaration is attached hereto.

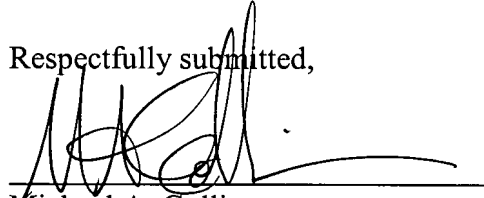
In the Decision May 7, 1999, the PCT Legal Office decided that the required inventor declaration and fee were filed May 1, 1998, and that this was the date of completion of requirements for entry into the national stage under 35 USC 371(c). However, the Legal Office noted a minor inaccuracy in the declaration -- it stated the filing date of the international application as August 7, 1996 rather than the correct date August 6, 1996. The Legal Office required a supplemental declaration to correct the date, and gave a one month period for response, holding further processing in abeyance.

As the Decision was not received when mailed, no response was possible. After Applicant received the Reply to Status Inquiry mailed October 6, 2000, enclosing the Decision, Applicant sought to obtain the signatures of the inventors on a supplemental declaration as

requested by the PCT Legal Office. However, despite repeated and diligent efforts to locate them, not all inventors were available for signature. In May 2001, signatures were obtained for three of the four inventors. Inventor John Groenendijk has not been and is no longer available for signing the declaration. It is submitted that the original declaration signed by all the inventors taken together with the supplemental declaration signed by the three available inventors and submitted herewith satisfies the requirements of 37 CFR 1.67(a).

Applicant therefore requests that a Notification of Acceptance be mailed and the application passed to the examining group for examination on the merits.

Respectfully submitted,



Michael A. Gollin
Registration No. 31,957
VENABLE
P.O. Box 34385
Washington, D.C. 20043-9998

Enclosure
DC2#301581

7/13/2001

Patent Information Print

Docket No	134354	Publication #	
Country	United States	Publication Dt	
Case Type	Regular	Assigned	
Relation Type	Original Filing	Expiration Dt	
Filing Type	National	Conv Type	Paris Convention
Filing No		Tax Base Dt	
Responsible Atty	MAG02 - Gollin, Michael A.	Next Tax Dt	
General Atty		Foreign Assoc	
Working Atty #1	MAG02 - Gollin, Michael A.	Working Atty #2	
Current Owner	Keygene N.V.	For Assoc Ref No	
Client	31640	Restriction	No
Client Ref No	B2930AB-MR	Classified	No
Status	Filed	Case Number	3140-134354
First Filing Dt	8/7/1995	Recordation Date	5/1/1998
Sub Stat	Abandoned	Old Docket No	GUPLA 0008
Sub Stat Dt	6/8/1998	Old Client	GUPLA
Parent Country	Patent Cooperation Treaty	Approved By	
Parent Filing Dt	8/6/1996	Audit Date	
Parent No	PCT/EP96/03480	Verified	N
Parent Grant Dt		Customer	VBPP
Total Claims		Create Dt	12/31/1999
Ind. Claims		Update Dt	7/13/2001
Application #	09/011307	Update Tm	1130
Application Dt	2/9/1998	Update User	MS
Patent No		Update Type	A
Grant Dt			

Actions

Action	Status Check - 1 Year	Comp Dt	10/12/2000
Act Due Date	8/6/1997	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Action	File by Due Date - USA	Comp Dt	2/9/1998
Act Due Date	2/7/1998	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Act Notes
Priority Appl. Filing Due - Priority Appl. Filing Due

Action	No Foreign Filing	Comp Dt	2/9/1998
Act Due Date	2/9/1998	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Action	Nat'l App. Filed	Comp Dt	2/9/1998
Act Due Date	2/9/1998	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Action	6-Month Status Check Due	Comp Dt	7/21/1998
Act Due Date	5/9/1998	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Act Notes
SD: Miss. 371 Req. Notice ~ SD: Miss. 371 Req. Notice

Action	IDS Due	Comp Dt	5/11/1998
Act Due Date	5/9/1998	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Act Notes
3-mo.IDS due ~ 3-mo.IDS due

Action	Supplemental Preliminary Ame	Comp Dt	7/1/1998
Act Due Date	7/1/1998	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Act Notes
Preliminary Amendment Filed ~ Preliminary Amendment Filed

Action	IDS Filed	Comp Dt	7/1/1998
Act Due Date	7/1/1998	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Act Notes
IDS Filed ~ IDS Filed

Action	Notice of Missing Req Due	Comp Dt	8/10/1998
Act Due Date	8/21/1998	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Act Notes
US: Missing 371 Requirements ~ Missing Req. Due w/0 Ext

Action	Nat'l Filing Fee Due	Comp Dt	2/9/1998
Act Due Date	2/6/1999	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Action	Notice of Recordation	Comp Dt	7/9/1998
Act Due Date	3/1/1999	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Act Notes
SD: Notice of Recordation ~ SD: Notice of Recordation

Action	Accepted By PTO	Comp Dt	10/12/2000
Act Due Date	10/9/1999	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Act Notes
SD:Notification of Acceptance? ~ SD:Notification of Acceptance?

Action	Notice of Abandonment	Comp Dt	5/14/2001
Act Due Date	5/14/2001	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Action	URGENT 3 DAY REMINDER	Comp Dt	5/17/2001
Act Due Date	5/17/2001	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

Act Notes
notice of abandonment received/ should be abandoned? (css)
checking on this.

Action	Abandon?	Comp Dt	
Act Due Date	7/14/2001	Resp Code #1	
Taken Dt		Resp Code #2	
DeadLn Dt			

****Remarks****

Remarks
Letter ereceived 9/25/2000 *
10/10/2000-Reply to Status inquiry received from USPTO stati
ng that case became abandoned 6/8/1999
due to failure to to submit supplemental declaration.

****Inventors****

Inv Name	ZABEAU, Marc	Assigned
Inv Name	VOS, Pieter	Assigned
Inv Name	SIMONS, Guus	Assigned
Inv Name	GROENENDIJK, John	Assigned

****Title****

Title
RESISTANCE AGAINST WILT INDUCING FUNGI

****Text****

Txt Type Priority Number & Country

Text
95401849.5 GB 07/08/1995

Txt Type Old Reel & Frame Number

Text
9158-648

Txt Type

Text

Txt Type

Text